



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

December 17, 2002

Mr. Tim G. Sralla
Taylor Olson Adkins
Sralla Elam L.L.P.
6000 Western Place, Suite 200
I-30 at Bryant-Irvin Road
Fort Worth, Texas 76107-4654

OR2002-7228

Dear Mr. Sralla:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173774.

The Richland Hills Police Department (the "department"), which you represent, received a written request for tape recordings of 911 calls as well as any videotape regarding an alleged criminal incident. You inform us that the department does not possess any videotape that is responsive to the request.¹ You contend, however, that the tape recordings of the 911 calls are excepted from required disclosure pursuant to sections 552.101 and 552.103 of the Government Code.²

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the informer's privilege. *See generally* Open Records Decision No. 515 (1988). The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of the law to officials responsible for enforcing those laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285 (1981), 279 (1981); *see also* Open Records Decision No. 208 (1978).

¹Consequently, the department is not required to provide this information to the requestor. *See Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.-San Antonio 1978, writ dismissed) (governmental body not required to furnish records not in its possession).

²Although you also raised section 552.108 of the Government Code, you have made no specific argument regarding the applicability of this exception. Consequently, we deem this exception as being waived. *See* Gov't Code §§ 552.301, .302.

In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

Two reasons for withholding names and statements of informants, despite the absence of a criminal prosecution, are that disclosure might either 1) subject the informant to intimidation or harassment or 2) harm the prospects of future cooperation between witnesses and law enforcement authorities. Open Records Decision No. 252 (1980). If these interests are to be protected, the informer's privilege must extend to information which would tend to reveal an informant's identity as well as to information which would directly do so. In some circumstances, for example, where an oral statement is captured on tape and the voice of the informant is recognizable, it may be necessary to withhold the entire statement to protect the informant's identity. Open Records Decision No. 434 at 2 (1986). However, because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the party who is the subject of the complaint. See Open Records Decision No. 208 (1978).

The tape recordings at issue consist of 911 calls to the department in which the callers report alleged violations of criminal laws. You inform us that "in all likelihood" the arrestee would be able to identify the callers from the voices on the tape recordings. Because you have not provided this office with any evidence that the individual who would have reason to retaliate has been made aware of the identities of the callers, we conclude that the department may withhold the tape recorded 911 calls in their entirety pursuant to section 552.101 of the Government Code in conjunction with the informer's privilege.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

³Because we resolve your request under the informer's privilege, we need not address your other arguments for non-disclosure.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

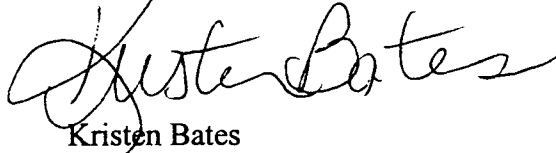
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Kristen Bates". The signature is written in black ink and is positioned above the printed name.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/RWP/lmt

Ref: ID# 173774

Enc: Submitted audio tapes

c: Mr. Jerry Loftin
Attorney at Law
113 North Houston Street
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(w/o enclosures)